



PRESS RELEASE - Ron Simon & Associates Files Tainted Chicken Lawsuit Against Foster Farms

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The national food safety law firm of Ron Simon & Associates, along with local counsel Gomez Trial Attorneys of San Diego, has filed a lawsuit stemming from *Salmonella*-contaminated chicken distributed by Foster Farms. Health officials have linked the tainted chicken to over 600 illnesses nationwide.

The lawsuit, filed on behalf of six outbreak victims, claims that Foster Farms knew that its chicken was contaminated with *Salmonella*, but kept selling the chicken for years despite numerous warning letters from federal health officials that the chicken would injure the public. The lawsuit seeks punitive damages against the company.

Copies of the lawsuit and warning letters to Foster Farms are attached.

Foster Farms: A History of Tainted Chicken and Salmonella Outbreaks

In 2004, health officials linked tainted Foster Farms chicken to 46 *Salmonella* Heidelberg illnesses, and the USDA warned Foster Farms that the company had failed to effectively control *Salmonella* contamination.

In 2009, the USDA again noted a rise in *Salmonella* Heidelberg illnesses, and again found that Foster Farms chicken was the source of those illnesses.

In 2012, health officials in Oregon and Washington identified a third *Salmonella* Heidelberg outbreak of 134 victims in 13 states, again linked to Foster Farms chicken. This outbreak was especially dangerous, as the strain of *Salmonella* Heidelberg had now become antibiotic resistant.

In 2013, the Centers for Disease Control (CDC) identified a fourth outbreak of *Salmonella* Heidelberg illnesses centered in California. The outbreak strain matched a sample taken from Foster Farms chicken. Health officials held a conference call with Foster Farms, who refused to issue a recall.

By the end of July, 2013, the CDC had identified six more *Salmonella* Heidelberg outbreak strains, all linked to Foster Farms chicken. Four of those strains demonstrated resistance to antibiotics.

On August 6, 2013, leftover Foster Farms chicken from a victim's home in Washington State tested positive for one of the outbreak strains of *Salmonella* Heidelberg. Health officials held a second telephone conference call with Foster Farms, which again refused to recall the contaminated products.

As a result, in October 2013, the CDC publically announced an outbreak investigation into Foster Farms, and the USDA issued a warning letter to Foster Farms. The letter warned Foster Farms that its chicken was the source of the outbreak and that the *Salmonella* Heidelberg outbreak strains had been found in Foster Farms products.

Despite these warnings, Foster Farms steadfastly refused to issue a recall.

On October 11th, 2013, laboratory testing confirmed that cooked rotisserie Foster Farms chicken sold at a Costco store in San Francisco contained one of the outbreak strains of *Salmonella* Heidelberg. Immediately, Costco issued the recall of 23,000 units of cooked rotisserie chicken products.

Despite these findings and Costco' recall, Foster Farms still refused to recall any tainted chicken products.

On January 8, 2014, the USDA notified Foster Farms President Ron Foster of "egregious" insanitary conditions, including an infestation of live cockroaches, in one of its production facilities – 6137 P. Shortly thereafter, health officials identified a spike of more than 50 new cases of *Salmonella* Heidelberg.

By May 22, 2014, the CDC had identified 571 *Salmonella* Heidelberg victims in 27 states and Puerto Rico, directly linked to contaminated Foster Farms chicken and facilities.

Still, Foster Farms refused to issue a recall.

Then, on June 23, 2014, health officials retrieved an intact sample of Foster Farms chicken from the home of a young boy in California who had been hospitalized for a severe *Salmonella* Heidelberg infection. The packaging on the chicken identified the production facility as Foster Farms facility 6137 P. The intact sample tested positive for *Salmonella* Heidelberg.

Finally, on July 12, 2014, facing this direct, overwhelming, and indisputable evidence, Foster Farms begrudgingly initiated a very limited recall of an "undetermined amount of chicken products" due to *Salmonella* Heidelberg.

Following the recall, the *Salmonella* Heidelberg outbreak abruptly ended.

The CDC eventually confirmed 634 victims in 29 states, with almost 500 residing in California. Of the victims, approximately 38% were hospitalized, and 15% developed blood infections.

Attorney Ron Simon Issues Statement for Victims, Sets up Salmonella Claim Center

Lead attorney Ron Simon, who represents several Foster Farms victims, issued the following statement today: "For years, despite repeated warnings from the CDC and USDA, Foster Farms refused to recall or even warn the public about its contaminated chicken while that chicken was poisoning hundreds of consumers. This litigation will examine those decisions and hold Foster Farms accountable for its egregious behavior."

Mr. Simon and his law firm have established a Foster Farms Salmonella Claim Center to assist victims in the outbreak. The Claims Center can be reached toll-free at 1-888-335-4901.

About Ron Simon

Over the last 20 years, Ron Simon and his colleagues have prosecuted thousands of food poisoning cases for victims across the United States. His work has resulted in numerous upgrades to food safety procedures in Fortune 500 companies and in legislation designed to protect consumers from dangerous food-borne pathogens.

Mr. Simon and his clients have been featured on NBC, ABC, CBS, CNN, FOX and virtually all other major television networks and print media. Mr. Simon has collected over \$600,000,000 for his clients. He regularly publishes articles about food safety and litigation at www.foodpoisoningnews.com which are read by viewers in over 180 countries.

Through litigation, media commentary, and his food poisoning publications, Mr. Simon relentlessly challenges food manufacturers, distributors, and restaurants to do a better job in making our food safe.

For media inquiries or more information on the Foster Farms *Salmonella* Heidelberg outbreak and ongoing litigation, please contact Ron Simon directly at (713) 819-8116 or ron@rsaalaw.com.

COPY

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Superior Court Of California
County Of Los Angeles

JUL 02 2015

Sherri R. Carter, Executive Officer/Clerk
By: Paul So, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 ALEXANDER MELENDEZ, a minor, by
and through his guardian ad litem,
13 BERNARD MELENDEZ; BERNARD
MELENDEZ, an individual; KEITH
14 APPLEWHITE, a minor by and through his
guardian ad litem, TENISHA TURNER;
15 TENISHA TURNER, an individual;
WILLIAM LINNIK; JOYCE GIDEL;
16 MARK OLSEN; and STEVEN TURNER

17 Plaintiffs,

18 vs.

19 FOSTER POULTRY FARMS, RON
FOSTER, and DOES 1 through 50,
20 inclusive,

21 Defendants.

Case No. BC 5 8 6 8 9 1

(Unlimited Civil)

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

23 Plaintiffs, by and through their attorneys of record Ron Simon & Associates and Gomez Trial
24 Attorneys, hereby allege as follows:

25 PRELIMINARY ALLEGATIONS

26 1. Plaintiff BERNARD MELENDEZ, individually and as guardian ad litem for
27 ALEXANDER MELENDEZ, a minor, is a resident of San Diego, California.
28

1 consumer has no warning of the fact of contamination.

2 14. After being ingested, *Salmonella* bacteria travel to the lumen of the small intestines,
3 then penetrate the epithelium, multiply, and enter the blood. This infection process – also referred to
4 as the incubation period – usually takes 6 to 72 hours for the onset of symptoms. As few as 15-20 cells
5 of *Salmonella* bacteria can cause infection.

6 15. The acute symptoms of *Salmonella* gastroenteritis (or *Salmonellosis*) include nausea,
7 vomiting, diarrhea, fever, abdominal cramping and/or stomach pain, dysuria, muscle pain, fatigue, and
8 dehydration. The duration of acute symptoms is typically four to seven days.

9 16. Medical treatment provided to an infected person typically involves treatment of the
10 symptoms, such as prescribing anti-nausea or anti-diarrhea medications. Some physicians prescribe
11 antibiotics. More severe cases may require intravenous fluids for treatment of dehydration, usually in
12 an emergency room or urgent-care setting. The elderly, infants, and those with impaired immune
13 systems are more likely to experience a severe illness or death from ingesting *Salmonella* bacteria.

14 17. More serious cases of salmonellosis occur when the particular strain of *Salmonella*
15 bacteria is resistant to traditional antibiotics, leading to a more prolonged illness and often other
16 complications.

17 18. In cases of prolonged or acute gastroenteritis, long-term side-effects, such as irritable
18 bowel syndrome (IBS) or irritable bowel disease (IBD), can develop, leading to the need for long-term
19 medical treatment and care.

20 **About Foster Farms**

21 19. Foster Farms is a California corporation and is the largest producer of poultry products
22 on the west coast. According to USDA inspectors, large facilities like Foster Farms plants slaughter up
23 to half a million birds daily. In some instances, single processors kill, scald, pluck, eviscerate, and
24 further process 140 birds per minute.

25 20. Foster Farms was previously linked to *Salmonella* Heidelberg illness in a 2004, when an
26 investigation by Washington and USDA-FSIS identified at least 46 victims. The USDA-FSIS issued a
27 NOTICE OF INTENDED ENFORCEMENT to Foster Farms on January 21, 2005. The FSIS warned
28 Foster Farms that it believed the company failed to effectively control salmonella, and that its hazard

1 control plan did not even list salmonella as a health threat to worry about. Furthermore, the letter
2 memorialized that Foster Farms was aware of a dramatic increase in *Salmonella* Heidelberg in 2004.
3 During the outbreak, the *Salmonella* Heidelberg strain developed the nickname “the Foster Farms
4 Strain” among some health officials in Oregon and Washington.

5 21. Then, in 2009, the occurrence of *Salmonella* Heidelberg started to rise again, leading to
6 another USDA-FSIS comprehensive food safety assessment finding that Foster Farms was again the
7 source.

8 22. Then, just prior to the outbreak at issue in this litigation, in June 2012, the Oregon
9 Health Authority and the Washington State Department of Health noted an increase in the number
10 of *Salmonella* Heidelberg clinical isolates sharing an identical pulsed-field gel electrophoresis (PFGE)
11 pattern. Again, the strain was identical to that previously linked to Foster Farms chicken, and a
12 traceback investigation among nine victims in Oregon and Washington confirmed all nine had
13 consumed Foster Farms chicken. This outbreak was especially dangerous, with the *Salmonella*
14 Heidelberg turning out to be antibiotic resistant. Officials eventually identified 134 victims in 13 states.
15 Exhibit 1.

16 **The 2013-2014 Salmonella Heidelberg Outbreak**

17 23. On June 17, 2013, the national disease monitoring database, PulseNet, identified a
18 cluster of salmonella cases along the west coast, centered in California. This cluster shared the same
19 rare PFGE pattern for *Salmonella* Heidelberg.

20 24. This strain of *Salmonella* Heidelberg was subsequently cross-matched against a retail
21 chicken isolate from the National Antimicrobial Resistance Monitoring System (NARMS).

22 25. On June 28, 2013, the Centers for Disease Control and Prevention (CDC) notified the
23 U.S. Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS) of the ongoing
24 *Salmonella* Heidelberg investigation. Within a few days, the FSIS informed the CDC that the NARMS
25 retail chicken isolate was Foster Farms’ brand chicken.

26 26. Ironically, that same day officials identified a second cluster of *Salmonella* Heidelberg
27 cases.

28 27. On June 28th, the FSIS notified the CDC that it had opened a multi-state investigation of

1 an outbreak associated with *Salmonella* Heidelberg PFGE Pattern #1.

2 28. On July 2nd, the USDA-FSIS linked PFGE Pattern #1 to Foster Farms chicken, and the
3 CDC identified a second *Salmonella* Heidelberg PFGE Pattern, #2.

4 29. As the number of *Salmonella* Heidelberg victims continued to grow, the CDC held its
5 first outbreak conference call with Foster Farms on July 5, 2013.

6 30. Foster Farms refused to issue a recall.

7 31. On July 8th, *Salmonella* Heidelberg PFGE Pattern #3 was identified, and on July 12th
8 *Salmonella* Heidelberg Patterns PFGE #4 and #5 were identified, including one in Washington State.
9 The CDC combined the five clusters into a single investigation.

10 32. Because such a high proportion of victims reported having eaten Foster Farms chicken
11 products prior to onset, the FSIS and investigators from the State of California continued to conduct a
12 full traceback investigation. This included collecting shopper histories from victims to confirm that
13 they had eaten Foster Farms chicken.

14 33. By the end of July, 2013, the CDC was investigating 7 different *Salmonella* Heidelberg
15 PFGE patterns, all linked to Foster Farms chicken.

16 34. At the same time, the Outbreak Response Team (ORT) determined through
17 antimicrobial susceptibility testing that at least 4 of the 7 Foster Farms *Salmonella* Heidelberg PFGE
18 patterns demonstrated resistance to several commonly used antibiotics.

19 35. Then, on August 6, 2013, an "intact" leftover Foster Farms product from one of the
20 victim's homes in Washington State tested positive for one of the PFGE patterns of *Salmonella*
21 Heidelberg linked to the Foster Farms outbreak.

22 36. In the following days, the FSIS held a second telephone conference with Foster Farms
23 and began intensive testing of Foster Farms raw chicken products.

24 37. Again, Foster Farms refused to issue a recall.

25 38. As the investigation continued, the number of victims continued to climb. Then, on
26 September 30th, officials identified a number of *Salmonella* Heidelberg victims who reported eating
27 rotisserie Foster Farms chicken from a Costco Store in San Francisco.

28 39. On October 7th, the FSIS issued a NOTICE OF INTENDED ENFORCEMENT to

1 Foster Farms and released a "Public Health Alert." Exhibit 2.

2 40. On October 8th, the CDC publically announced its *Salmonella* Heidelberg outbreak
3 investigation into Foster Farms chicken.

4 41. The CDC's NOTICE OF INTENDED ENFORCEMENT to Foster Farms stated, in
5 part, "This letter serves as an official notification by the Food Safety and Inspection Service . . . of the
6 intent to withhold the marks of inspection and suspend the assignment of inspectors . . . at your
7 establishment This action is based on your establishment's failure to operate in a manner that is
8 consistent with the requirements of the Hazard Analysis and Critical Control Points (HACCP) plan,
9 Sanitation Standard Operating Procedures (SSOP) program, and Sanitation Performance Standards
10 (SPS) regulations Your failure to operate in accordance with these regulations at Establishment
11 6137 in Livingston, California, is evidenced by the fact that multiple poultry products produced by
12 your establishment have been implicated in an ongoing illness outbreak for *Salmonella* Heidelberg."

13 42. The NOTICE added that Establishment 6137 had "a high frequency of *Salmonella*
14 positives and specifically, a high frequency of one or more outbreak strains of serotype *Salmonella*
15 Heidelberg were found in your products."

16 43. The NOTICE specifically identified *Salmonella* Heidelberg PFGE pattern
17 JF6X01.0258, as well as the other six additional *Salmonella* Heidelberg patterns including
18 JF6X01.0022, JF6X01.0045, JF6X01.0041, JF6X01.0326, JF6X01.0122 and JF6X01.0672.

19 44. The NOTICE further stated: "Establishment 6137 has been implicated as a producer
20 and supplier of poultry products associated with this ongoing *Salmonella* Heidelberg illness outbreak .
21 . . the results have shown that one or more of the outbreak strains of *Salmonella* was found in the
22 poultry products. Ongoing illness continues to be associated with these products. FSIS personnel
23 collected 150 various product samples at Establishment 6137. As of October 7, 2013, a total of 40
24 samples (26.67%) confirmed positive for *Salmonella*. There have been 30 isolates of *Salmonella*
25 Heidelberg derived from the *Salmonella* positive samples thus far. Furthermore, FSIS has found that
26 multiple *Salmonella* isolates identified on products produced at your facility have the same PFGE
27 patterns as those in the illness outbreak."

28 45. On October 11th, laboratory testing also confirmed that the leftover cooked rotisserie

1 Foster Farms chicken sold at the Costco in San Francisco contained one of the outbreak strains of
2 *Salmonella* Heidelberg.

3 46. The identification of this strain of *Salmonella* Heidelberg compelled Costco to issue a
4 recall. The FSIS announced the recall of 23,000 units of cooked rotisserie chicken products sold at the
5 San Francisco Costco location.

6 47. Then, on October 11th, a laboratory identified *Salmonella* Heidelberg PFGE Pattern #1
7 isolate in another Costco cooked Foster Farms chicken.

8 48. Despite these findings and Costco's own recall, Foster Farms continued to refuse to
9 recall any of its products.

10 49. Following the Costco recall, the number of new *Salmonella* Heidelberg cases declined
11 in November. By December, the number of new *Salmonella* Heidelberg cases had returned to near-
12 normal levels. In January of 2014, the CDC indicated that the *Salmonella* Heidelberg outbreak had
13 likely run its course.

14 50. Ironically, on January 8th, the FSIS notified Foster Farms President Ron Foster that,
15 subject to FSIS Rules of Practice, Title 9 Code of Federal Regulations (CFR), Part 500.3(a)(4), the
16 FSIS would be withholding its marks of inspection and suspending the assignment of inspectors at
17 Foster Poultry Farms Establishment No. 6137 P. The action was initiated "based on egregious
18 insanitary conditions observed in your establishment whereby products produced at your facility may
19 have been rendered adulterated in violation of the Poultry Products Inspection Act (PPIA) 21 U.S.C.
20 453 and 456 . . ." The primary precipitating factor was the presence of "an infestation of live
21 cockroaches in and around your production areas" which "indicate that your establishment is not being
22 operated and maintained in sanitary condition, or in a manner to ensure that product is not adulterated."
23 Exhibit 3.

24 51. The NOTICE OF SUSPENSION noted that "The Poultry Products Inspection Act, 21
25 U.S.C 453(g)(4), states product is adulterated '*if it has been prepared, packed, or held under insanitary*
26 *conditions whereby it may have become contaminated with filth, or whereby it may have been rendered*
27 *injurious to health.*'" The NOTICE OF SUSPENSION also stated that "Foster Poultry Farms failed to
28 meet the sanitary measures required by the Sanitation Performance Standards regulatory requirements,

1 creating insanitary conditions that may result in the production of products, which may have been
2 rendered injurious to health.”

3 52. Unfortunately, shortly after issuance of this NOTICE OF SUSPENSION, officials
4 identified more than 50 new cases of *Salmonella* Heidelberg and the CDC reopened its investigation
5 into the Foster Farms *Salmonella* Heidelberg outbreak. Exhibit 4.

6 53. By May 22nd, the CDC had identified 571 *Salmonella* Heidelberg victims in 27 states
7 and Puerto Rico, with at least 7 PFGE patterns of *Salmonella* Heidelberg directly linked to Foster
8 Farms facilities and Foster Farms chicken.

9 54. Still, Foster Farms refused to issue a recall.

10 55. Then, on June 23, 2014, the CDC notified the FSIS that Plaintiff Alexander Melendez
11 had become ill after ingestion of Foster Farms boneless skinless chicken breast tainted with *Salmonella*
12 Heidelberg. Alexander’s family had purchased the chicken from Costco in March and stored it in the
13 family’s freezer. Alexander had consumed it in late April, becoming ill on or about May 5, 2014.

14 56. Investigators went to the Melendez home and were able to retrieve the remaining Foster
15 Farms chicken from the Melendez’ freezer. The packaging on the chicken identified the production
16 facility as Foster Farms facility 6137 P, and also identified the production date.

17 57. In addition, the remaining Foster Farms chicken from the Melendez home tested
18 positive for one of the outbreak strains of *Salmonella* Heidelberg.

19 58. Finally, facing this direct, overwhelming, and indisputable evidence that Foster Farms
20 chicken had sickened Alexander, Foster Farms begrudgingly initiated a very limited recall of its tainted
21 chicken on July 12, 2014.

22 59. The recall included an “undetermined amount of chicken products” due to
23 contamination by one of the outbreak strains of *Salmonella* Heidelberg. It was a limited recall,
24 targeting chicken produced on March 7-13, 2014, bearing establishment numbers P6137, P6137A and
25 P7632 inside the United States Department of Agriculture (USDA) inspection stamp. Exhibit 5.

26 60. But Foster Farms still refused to issue a wider recall of its raw chicken products.

27 61. As of the last CDC report, dated July 31, 2014, the CDC was cautiously optimistic that
28 the Foster Farms *Salmonella* Heidelberg outbreak had ended. The CDC reported 634 laboratory

1 confirmed Foster Farms *Salmonella* Heidelberg victims, with onsets occurring between March 1, 2013
2 and July 11, 2014.

3 62. The 634 confirmed victims resided in 29 states and Puerto Rico. Most of the ill persons
4 (77%) were reported from California. The total number of ill persons identified in each state was as
5 follows: Alaska (1), Alabama (1), Arkansas (1), Arizona (25), California (490), Colorado (9),
6 Connecticut (1), Delaware (1), Florida (4), Georgia (1), Hawaii (1), Idaho (5), Illinois (4), Kentucky
7 (1), Louisiana (1), Michigan (4), Missouri (5), Montana (1), Nevada (11), New Mexico (2), North
8 Carolina (1), Oregon (17), Tennessee (1), Texas (13), Utah (6), Virginia (4), Washington (20), West
9 Virginia (1), and Wisconsin (1); one illness was reported from Puerto Rico. Unofficial estimates put
10 the number of Foster Farms related illnesses in the thousands.

11 63. Of the victims, approximately 38% were hospitalized. Fifteen percent (or three times
12 the normal amount) of the *Salmonella* Heidelberg victims also developed blood infections as a result of
13 their illnesses.

14 **Foster Farms Facilities Promoted the Growth of *Salmonella* Heidelberg**

15 64. In the decade prior to the Foster Farms *Salmonella* Heidelberg outbreak at issue in this
16 lawsuit, Foster Farms had been linked again and again to *Salmonella* Heidelberg illnesses from
17 consumption of its chicken. Nonetheless, in the months leading up to this outbreak of *Salmonella*
18 Heidelberg, Foster Farms was cited numerous times at its various production facilities for
19 noncompliance with governing operational and food safety standards.

20 65. According to the FSIS, "From January 1, 2013, (just prior to identification of illness in
21 early March), through September 27, 2013, FSIS personnel have documented 34 Noncompliance
22 Records (NRs) for findings of fecal material on carcasses. Furthermore, FSIS has identified multiple
23 noncompliances including but not limited to findings of poor sanitary dressing practices, insanitary
24 food contact surfaces, insanitary non food contact surfaces and direct product contamination as
25 evidenced by the documentation of a considerable number of recurring NRs issued to your
26 establishment for preoperational, operational, and SPS noncompliances." Exhibit 2, p. 4.

27 66. Then, during the period of "intensified FSIS *Salmonella* testing and forward," between
28 September 30, 2013 and March of 2014, Foster Farms facilities incurred another 480 Noncompliance

1 Records (NRs).¹ At least 44 NRs were specific to facility establishment number 6137A. The many
2 violations at Foster Farms establishment 6137A included:

- 3 a. a number of NRs for findings of “contamination in various parts of the carcasses”
4 including findings of visible fecal material, brown in color and paste-like consistency;
5 “dark green spots where the oil gland had been removed”; carcasses with visible
6 ingesta material; carcasses with kidney tissues; and carcasses with “cellulitis trim
7 defect.” In a number of NRs, reprocessing was ineffective;
- 8 b. instances where an inspector found carcasses which clearly showed signs of having died
9 by means other than slaughter. One was found coming down the evisceration line with
10 large areas of ischemia and a very dark liver, and in another case, the carcass was
11 congested on one side and showed a 3” line of hemorrhage of the keel;
- 12 c. in yet another NR, approximately 200 or so birds in each of two piles had fallen on the
13 floor, including on a drain containing feces. So many had dropped that it caused the
14 drain to back up. The employee picking them up was contaminating other birds with
15 the foul water – she proceeded to discard some birds (having direct contact with the
16 drain) but intended to wash the others with water from a hose. The inspector was
17 forced to intervene;
- 18 d. in an anti-mortem and humane handling check, “the cage washer machine was not
19 operating at all. The cages were passing through the washing machine and coming out
20 the same, dry as well as dirty”;
- 21 e. in another NR, an employee dragging a filthy trash receptacle across the production
22 facility was preparing to enter the cooler. The inspector stopped him and told him he
23 could not take the trash receptacle into the cooler. The employee then proceeded to
24 hose off the trash receptacle, but the inspector again intervened, noting he could not
25 wash the receptacle in the production area. The employee decided to leave the trash
26 receptacle and enter the cooler. The inspector stopped him again, noting that the gloves

27
28 ¹ The records reflecting these Noncompliance Records, received in response to a FOIA request, number approximately 300 pages, and as such could not be attached as an Exhibit to this complaint.

1 he was wearing were now contaminated by the trash receptacle. The employee then
2 discarded the gloves in the trash receptacle and entered the cooler;

3 f. other NRs dealt with improper employee handling of product, with one NR detailing
4 how an employee working on a pallet of returned rotisseries for “rework” (to be cut up)
5 who “proceeded to take the carcasses out of the bag without washing or sanitizing her
6 gloves, creating an insanitary condition and cross contaminating the product”;

7 g. still other NRs addressed food particles, including “numerous pieces of fat and muscle
8 from previous shift of production” on the conveyor in direct production contact and
9 identification of fat and skin around equipment, and grease build up on supporting
10 structures above for the previous day’s production;

11 h. another NR was directed at a failure to correct highly unsanitary conditions, such as
12 when on October 8, 2013, an inspector noted the “drain of the offal area was clogged,
13 and the area around the drain, approximately 20 feet by 20 feet, was covered by bloody
14 water” at facility 6137A. The next day, the drain remained “clogged and covered with
15 smelly stagnant water”;

16 i. another NR refers to the evisceration department break room, which had stagnant water
17 and used paper towels and debris everywhere. In the live-hang restroom, the floor was
18 covered with used paper towels and filthy tissues. There was also no running hot water;
19 and finally

20 j. other violations (NRs) included a failure to maintain proper cooler doors and failure to
21 keep doors closed; a failure to properly maintain labeling of product; a failure to
22 maintain equipment such that it prevents insanitary conditions and ensures the product
23 is not adulterated; use of a power washer on floors which then sprayed contaminated
24 water up onto conveyors used for product; and instances of equipment with rust, gloves
25 with food particles, and employees working with soiled smocks.

26 67. The FSIS warned Foster Farms that it was “very concerned with the failure of
27 Establishment 6137 to implement adequate and supportable control measures to address *Salmonella*,
28 coupled with the high frequency of one or more outbreak strains of *Salmonella* Heidelberg associated

1 with ongoing illnesses and found in products produced by this establishment.” Exhibit 2. The FSIS
2 emphatically stated that the “prevalence of *Salmonella* in finished poultry products poses a risk to
3 public health.”

4 68. FSIS further told Foster Farms, on October 7, 2013, “A prudent establishment would
5 take the control measures necessary to prevent the persistent recurrence of *Salmonella*, including but
6 not limited to validated interventions to demonstrate control of your process.” Even after these
7 warnings, the above noted NRs continued to create an environment where *Salmonella* could replicate
8 and spread.

9 69. These unsanitary conditions recorded both before and after the FSIS issued its NOTICE
10 OF INTENDED ENFORCEMENT are clear evidence of Foster Farms’ culture of disregard for food
11 safety at the Foster Farms’ facilities that allowed for the introduction and rapid spread of *Salmonella*
12 Heidelberg bacteria.

13 70. Additionally, in the NOTICE OF SUSPENSION, the USDA stated clearly that “Foster
14 Poultry Farms failed to abide by the rules and regulations promulgated under the Poultry Products
15 Inspection Act.”

16 **Foster Farms and Antibiotic Resistant *Salmonella* Heidelberg**

17 71. The numerous safety failures at Foster Farms production facilities, including
18 establishment 6137A, were also a contributing factor to the spread of antibiotic resistant *Salmonella*
19 Heidelberg.

20 72. Foster Farms relied upon the heavy use of prophylactic antibiotics in its chicken due to
21 the unsanitary condition of its facilities.

22 73. Foster Farms used these prophylactic antibiotics to encourage the growth and viability
23 of its poultry and to safeguard corporate profits while raising the poultry in heavily contaminated
24 facilities.

25 74. The extensive use of prophylactic antibiotics did not prevent Foster Farms chicken from
26 being infected with numerous strains of *Salmonella* Heidelberg, but instead created a breeding ground
27 for antibacterial-resistant strains of *Salmonella*.

28 75. Foster Farms knew that the raw chicken it sold to restaurants and retail establishments

1 contained *Salmonella* Heidelberg, and that many of the strains of *Salmonella* Heidelberg had been
2 identified as antibiotic-resistant by the National Antimicrobial Resistance Monitoring System, evincing
3 resistance to one or more commonly prescribed antibiotics used to treat people with salmonellosis.

4 76. Specifically, Foster Farms also knew that human cases of salmonellosis are more severe
5 (being difficult to treat effectively) when the strains of *Salmonella* bacteria are resistant to antibiotics.

6 77. Foster Farms knew that many consumers were becoming sick with antibiotic-resistant
7 *Salmonella* Heidelberg and that a much higher than normal proportion of identified outbreak victims
8 were testing positive for *Salmonella* in their blood.

9 78. Foster Farms also knew that there would be no additional testing of its raw chicken by
10 entities in the chain of commerce once its product left its establishments and that consumers would
11 consume this chicken with no warning that it contained salmonella.

12 **Plaintiff Alexander Melendez's Salmonella Heidelberg Illness**

13 79. On or about March 16, 2014, the parents of 4th grader Alexander Melendez purchased
14 Foster Farms Boneless Skinless Chicken Breasts from a local Costco in Vista, California. The chicken
15 had been produced at Foster Farms establishment number P6137A, and had a "Use or Freeze" date of
16 03/21/14. The chicken was frozen until late April, when it was prepared.

17 80. On or about April 29th, Alexander consumed the chicken. Unfortunately, by May 5th,
18 Alexander was exhibiting a full array of symptoms of salmonellosis.

19 81. By May 9th, Alexander's parents had become extremely concerned that Alexander had
20 not recovered, and took him to Kaiser Permanente at San Marcos. Alexander presented with a 5 day
21 history of diarrhea, fever, headaches, and body aches. After tests revealed the presence of gram neg.
22 rods in Alexander's blood, indicative of bacterial infection, Alexander's parents were encouraged to
23 seek additional medical attention.

24 82. Alexander's parents then took him to Kaiser San Diego Medical Center Hospital in San
25 Diego, California. Doctors admitted Alexander and called for an infectious disease consultation.
26 Doctors diagnosed Alexander with *Salmonella* bacteremia, and started him on an IV with ceftriaxone.
27 A blood culture on May 12th confirmed *Salmonella* likely due to food poisoning.

28 83. The San Diego County Public Health Laboratory Health and Human Services Agency

1 determined the bacterial growth to be *Salmonella* Heidelberg, with a PFGE pattern JF6X01.0258. The
2 San Diego County Public Health Laboratory Health and Human Services Agency reported the finding
3 to the CDC, and the CDC confirmed that the sample conclusively matched the CDC Cluster
4 1306MLJF6-1. Officials determined that the remaining tainted chicken taken from the Melendez
5 home, which also tested positive for one of the outbreaks strains of *Salmonella* Heidelberg, was
6 produced at Foster Farms establishment number P6137A.

7 84. As a result of these findings, Foster Farms finally implemented a recall of an
8 “indeterminate” amount of chicken.

9 85. Alexander received follow-up care at Carmel Valley Medical and at the Vandever
10 Medical Office in San Diego.

11 **Plaintiff Keith Applewhite’s Salmonella Heidelberg Illness**

12 86. On or about July 4, 2013, Keith Applewhite, a teenage boy, consumed Foster Farms
13 brand chicken, and within days became sick with the symptoms of salmonellosis.

14 87. On July 8th, Keith presented to the Bellflower Medical Offices in Bellflower, California
15 with a 3 to 4 day history of diarrhea, vomiting, weakness, dizziness, and abdominal pain. According to
16 the medical records, Keith was experiencing about 8 episodes of diarrhea daily. The attending
17 physician prescribed Zofran and instructed Keith and his mother to make sure to keep Keith hydrated.

18 88. Keith’s condition failed to improve, however, and on July 12th his mother took him to
19 the Downey Medical Center in Downey, California. Keith was evaluated by a number of physicians
20 and they decided to admit Keith to the hospital, noting a history of vomiting, diarrhea, cramping, fever,
21 and weakness. The attending physicians placed Keith on sodium chloride .9% Bolus IV solution,
22 ordered administration of acetaminophen, and ordered numerous tests, including CBC w/ Diff,
23 electrolyte, bun and creatinine serums, glucose test, blood cultures, liver enzyme tests, urinalysis, and a
24 hepatitis screen. These tests were generally unremarkable except for depleted electrolytes. Keith’s
25 physicians also ordered a stool culture and stool WBC.

26 89. Hospital staff thereafter transferred Keith to an observation room for monitoring. Then,
27 on July 14th at 5:02 pm, Keith’s blood culture came back positive for *Salmonella*. One of the doctors
28 immediately placed Keith on ceftriaxone for *Salmonella* poisoning. The stool culture also came back

1 positive for *Salmonella*, and the results were immediately reported to the Los Angeles County
2 Department of Public Health.

3 90. On July 15th, the attending physician ordered Keith's discharge, while ordering a "plan
4 to give 4 more days IV antibiotics in clinic and then change to oral Bactrim." Keith and his mother
5 were advised to follow up with Keith's pediatrician.

6 91. On July 16th, 17th, 18th, and 19th, 2013, Keith presented to the Orchard Medical Offices
7 in Downey, California for follow up to salmonellosis. As per his pediatrician, staff administered
8 Ceftriaxone, 1 GM, by intravenous infusion. Each infusion took 30 minutes.

9 92. On July 31st, Keith and his mother presented again to the Bellflower Medical offices.
10 By this time, Keith's symptoms had improved.

11 93. Los Angeles County Department of Health officials interviewed Keith and his mother
12 several times and determined that Keith was a victim of salmonellosis following consumption of
13 contaminated Foster Farms chicken.

14 94. The California Department of Health officials subsequently identified Keith as a
15 confirmed case of *Salmonella* Heidelberg, with a PFGE pattern JF6X01.0045 (matched to CDC
16 Cluster 1306MLJF6-1), which was linked to consumption of contaminated Foster Farms chicken.

17 **Plaintiff William Linnik's Salmonella Heidelberg Illness**

18 95. On August 30, 2013, Bill Linnik purchased chicken from the Ralphs grocery store
19 located at 4315 Mission Boulevard in Pacific Beach, CA. He ate it later that day.

20 96. On August 31st, Bill began to suffer abdominal pain, fever and chills with attendant
21 bloating and swelling of his abdomen. Within a short period of time, he began to suffer from watery,
22 often bloody, diarrhea, with episodes of urgency and diarrhea occurring about 15 times daily. William
23 tried to treat his symptoms with Imodium, but it provided no relief.

24 97. On September 2nd, Bill got on a flight to go visit his recently widowed 78 year-old
25 mother in Colorado. Unfortunately, he spent most of the flight in the airplane lavatory. Once in
26 Denver, Bill was so weak that he had to ask his mother to drive. She drove from Denver International
27 Airport to Fort Collins. Along the way, Bill began to lose consciousness. Rather than finish the trip to
28 Fort Collins, they detoured to seek medical attention.

1 98. Bill presented to CHMG Urgent Care in Fort Collins on September 2nd, with a recent
2 history of diarrhea, abdominal pain, nausea, and fatigue. An attending physician treated Bill, recording
3 his medical history and conducting a physical evaluation. The doctor ordered blood work, including a
4 CMP which revealed low sodium, and a CBC, which was largely unremarkable. Bill's dehydration
5 was the most immediate challenge, with an experienced emergency nurse making multiple attempts to
6 find a vein for drawing blood and for administration of IV fluids. At CHMG, Bill received 3 liters of
7 IV saline complete with Zofran and Ofirmev.

8 99. The physician diagnosed Bill with dehydration, diarrhea, and nausea, and ordered a
9 complete stool culture, including O & P, C. Diff, and traditional bacterium. The test results revealed a
10 heavy growth of *Salmonella*, with all other results being negative. Staff forwarded the results to the
11 Colorado Department of Public Health and Environment, which performed further testing on his stool
12 sample and confirmed that Bill had contracted *Salmonella* Heidelberg.

13 100. The attending physician discharged Bill with medication for nausea and diarrhea,
14 including Ondansetron and Flagyl.

15 101. Bill remained in bed for the next couple of days, suffering the ongoing effects of
16 salmonellosis. The purpose of his trip, which was to assist his very recently widowed mother with the
17 estate, was ruined.

18 102. Bill finally arrived back in San Diego on September 4th, with the symptoms continuing,
19 although less severe. Bill made an appointment with his own doctor, who repeated lab work to follow
20 up on the electrolyte abnormalities and see if Bill's condition had resolved. His physician ordered a
21 CBC, a CMP, and a urine dipstick. By September 9th, the symptoms were much improved, and within
22 days, Bill's gastrointestinal health seemed to have returned.

23 103. Because Bill is a San Diego resident, staff at the CHMG Urgent Care facility notified
24 the County of San Diego Department of Health Services ("CSDDHS") of Bill's *Salmonella* illness.

25 104. In addition, the Colorado Department of Public Health forwarded the positive
26 *Salmonella* Heidelberg test results to CSDDHS and subsequently identified Bill as a confirmed case of
27 *Salmonella* Heidelberg, with a PFGE pattern JF6X01.0022 (matched to CDC Cluster 1306MLJF6-1),
28 which was linked to consumption of contaminated Foster Farms chicken.

1 **Plaintiff Joyce Gidel's Salmonella Heidelberg Illness**

2 105. On at least June 15, 2013, Joyce Gidel purchased a Foster Farms chicken from her
3 neighborhood store in El Sobrante, California. She placed it in her freezer when she returned home.

4 106. On July 21st, Joyce cooked and consumed the Foster Farms chicken.

5 107. On July 23rd, Joyce began to feel ill, experiencing diarrhea, abdominal cramps, fever
6 (which spiked to 104 degrees), headaches, chills, body aches, malaise, and a loss of appetite.

7 108. As the days passed, she became increasingly alarmed.

8 109. Finally, on August 2nd, Joyce presented to Alta Bates Summit Medical Center ER for
9 treatment. She presented with a history of diarrhea, fatigue, and a fever that ranged from 101 to 103.

10 110. At Alta Bates, a medical professional placed Joyce on IV fluids, and ordered a lipase,
11 CBC, CMP, an abdominal ultrasound, and x-rays, all of which were unremarkable except for slight
12 elevations in Joyce's LTFs. Given her condition, the attending physician ordered a stool culture and
13 ova/parasite test.

14 111. On August 7th, the staff at Alta Bates notified Joyce that her stool test had come back
15 positive for *Salmonella*. The positive lab was reported to the Alameda County Public Health
16 Laboratory and the sample was forwarded the California Department of Public Health, Microbial
17 Diseases Laboratory (CDPHMDL).

18 112. Over the next few weeks, Joyce's symptoms gradually subsided and she was able to
19 return to work full time.

20 113. Contra Costa Health Department officials interviewed Joyce several times and
21 determined that she had purchased and consumed the contaminated Foster Farms chicken.

22 114. California Department of Health officials subsequently identified Joyce as a confirmed
23 case of *Salmonella* Heidelberg, with a PFGE pattern JF6X01.0045 (matched to CDC Cluster
24 1306MLJF6-1), which was linked to consumption of contaminated Foster Farms chicken.

25 **Plaintiff Mark Olsen's Salmonella Heidelberg Illness**

26 115. In late August, 2013, Mark Olsen purchased and ate Foster Farms chicken in San
27 Diego, California.

28 116. Shortly thereafter, Mark began to experience nausea, vomiting and diarrhea. At first,

1 Mark was hopeful that his illness was a 24 hour bug that would pass. Unfortunately, the symptoms
2 continued to worsen.

3 117. On August 30th, Mark presented to Scripps Health Emergency where the attending
4 physician noted a three-day history of vomiting, nausea, diarrhea, and related abdominal cramping and
5 dehydration. The physician immediately placed Mark on IV fluids with administration of Dilaudid and
6 Zofran, ordered a CBC and CMP, both of which were largely unremarkable, and an abdominal and
7 pelvic CT. The CT was notable for a finding of ileocolitis, consistent with "inflammatory bowel
8 disease and infectious causes." One of the doctors on staff also ordered a stool culture for C. Diff and
9 other bacterium.

10 118. Given the findings of the CT, the doctor placed Mark on Rocephin, noting "given how
11 pronounced and severe it is, I do think it is reasonable to start him on antibiotics. For this reason, I
12 gave him a dose of Rocephin here and we will discharge on Cipro and Flagyl for that as well as Zofran
13 for nausea." The same doctor diagnosed Mark with acute severe gastroenteritis; acute severe
14 dehydration; and acute diarrheal illness. He treated Mark with a regime of antibiotics and discharged
15 him, providing him a two-day work release note.

16 119. Though he was still feeling ill, on September 1st Mark returned to work for an
17 abbreviated shift of 4½ hours. He knew that his medication was starting to work, and managed to
18 make it through the shift. But the next day, San Diego County Health Department officials informed
19 him that he was a part of the *Salmonella* Heidelberg outbreak linked to contaminated Foster Farms
20 chicken. They instructed him to refrain from working until he produced 2 negative stool cultures.

21 120. Finally, after 2 negative cultures, he returned to work part-time on September 11th,
22 slowly working his way back into a full time schedule.

23 121. San Diego County Health Department officials interviewed Mark several times and
24 determined that he had purchased and consumed contaminated Foster Farms chicken.

25 122. California Department of Health officials subsequently identified Mark as a confirmed
26 case of *Salmonella* Heidelberg, with a PFGE pattern JF6X01.0022 (matched to CDC Cluster
27 1306MLJF6-1), which was linked to consumption of contaminated Foster Farms chicken.

28 ///

1 **Plaintiff Steven Turner's Salmonella Heidelberg Illness**

2 123. On or about July 4, 2013, Steven Turner and Keith Applewhite consumed Foster
3 Farms chicken. Shortly thereafter, Steven began to experience symptoms consistent with
4 salmonellosis.

5 124. On July 8th, Steven presented to Bellflower Medical Offices with a recent history of
6 diarrhea and abdominal cramps. The attending physician performed an evaluation and ordered a CBC
7 which revealed low WBC, elevated RBC, and low MCV, MCH and platelets. In addition, an
8 electrolyte panel showed low sodium, potassium and chloride. Other blood work was generally
9 unremarkable. The attending physician did note the low WBC, but diagnosed Steven with
10 gastroenteritis, telling Steven to go to the ER if his condition did not improve.

11 125. On July 12th, Steven was forced to seek additional medical attention. He presented to
12 Downey Medical Center in Downey, California. He complained of ongoing diarrhea and nausea. The
13 attending physician placed Steven on sodium chloride 0.9% IV solution to combat suspected renal
14 failure, with Ondansetron and Famotidine to counter the symptoms of gastroenteritis. He also
15 prescribed antibiotics, including Rocephin, which is used to treat *Salmonella* bacterial infections. The
16 attending physicians also ordered administration of IV Cipro, Flagyl, lidocaine, and acetaminophen.

17 126. The attending physician also ordered lab work, including a CBC, electrolyte, Bun,
18 creatinine, glucose, calcium, total bilirubin, Alk. Phos., hepatic function, and urinalysis, and ordered
19 that Steven be admitted to the hospital. To be thorough, the attending physician also ordered a stool
20 test with O&P and a rapid HIV. These labs were all performed over the next 24 hours during which
21 time Steven underwent an abdominal ultrasound which demonstrated pancreatitis.

22 127. The attending physician diagnosed Steven as suffering dehydration, acute kidney failure
23 or injury, pancreatitis, and diarrhea that was likely infectious. He therefore ordered ongoing
24 administration of IV Cipro and Flagyl and aggressive IV hydration to combat the infectious bacterial
25 etiology of Steven's illness and to combat acute renal injury and/or failure.

26 128. Over the next few days, physicians continued to monitor Steven, and ordered an
27 ultrasound (performed on the 12th), abdominal CT (performed on the 15th), and a liver MRI (performed
28 on the 16th). Having reviewed the tests and analyses performed on Steven, his physicians diagnosed

1 Steven with infectious diarrhea, likely *Salmonella*, small hepatic hemangioma, hyponatremia,
2 hypophosphatemia, and hypokalemia.

3 129. The final report for Steven's initial stool test was received on July 16th and was negative
4 for bacterial growth, and subsequent stool tests ordered for C-Diff and E. coli were also negative.
5 These stool tests were all performed *after* administration of IV antibiotics, however. The attending
6 physician, aware that an initial stool test had been negative, nonetheless determined that Steven was
7 infected with *Salmonella* as a result of ingestion of contaminated chicken. The physician further
8 confirmed his diagnosis of salmonellosis noting that both Steven and his step son had become ill at
9 about the same time after having eaten Foster Farms' chicken.

10 130. On the evening of July 16th, the attending physician discharged Steven with additional
11 prescriptions for Cipro and Flagyl, and with instructions to seek follow-up medical treatment in one
12 week. The same physician provided discharge papers for the proper treatment and maintenance of
13 diarrhea.

14 131. On July 25th, Steven returned to the Bellflower Medical Offices for follow up care to his
15 recent hospitalization. His physician noted that the reasons for his hospitalization were diarrhea and
16 acute renal failure, and that he had been treated with Rocephin, and then with both Flagyl and Cipro.
17 She also noted that Steven had undergone an abdominal CT and abdominal ultrasound. She ordered
18 basic blood work which was generally unremarkable. By this visit, his doctor noted that Steven's
19 symptoms of abdominal pain, fever and chills, and diarrhea had resolved.

20 132. Los Angeles County Health Department officials interviewed Steven several times and
21 determined that he had purchased and consumed contaminated Foster Farms chicken.

22 133. Los Angeles County Health Department officials subsequently identified Steven as a
23 presumptive case of *Salmonella* Heidelberg in the Foster Farms outbreak due to his eating the same
24 chicken as Keith Applewhite (who had tested positive for *Salmonella* Heidelberg with a PFGE match
25 to the outbreak).

26 **Foster Farms Behavior Reflects Willful and Conscious Disregard of the Safety of Consumers**

27 134. Defendants' refusal to issue a recall and safeguard the public can only be described as
28 despicable conduct that represents a willful and conscious disregard of the rights or safety of others,

1 including those of Plaintiffs. Foster Farms did not issue a recall even though it was fully aware it was
2 the cause of the largest salmonella outbreak linked to chicken in U.S history, and that this particularly
3 dangerous *Salmonella* Heidelberg strain was leading to increased hospitalization rates and cases of
4 salmonella in the blood. In addition, Foster Farms chose not to warn the public, but instead acted to
5 conceal the material fact *known to it* that its chicken was carrying *Salmonella* Heidelberg – and did so
6 even while identifying *Salmonella* “as a food safety hazard not reasonably likely to occur in its Raw
7 Intact and Raw Non Intact processes” (an assessment for which it had been criticized by FSIS
8 previously but failed to correct). It did so for profit, to avoid loss of market share, and with the result
9 and intention of causing injury to the public.

10 135. Foster Farms had been fully aware of its *Salmonella* Heidelberg problem for nearly a
11 decade, and even when this current outbreak started in 2013, Foster Farms refused to issue any recall
12 for another full year. Even when it did so, it issued only a limited recall in the wake of the Melendez
13 findings.

14 136. That Foster Farms’ behavior evinces a conscious, knowing, deliberate and egregious
15 disregard of the Plaintiffs’ rights, safety, and wellbeing is clearly evident in light of the written
16 NOTICE OF INTENDED ENFORCEMENT. The NOTICE specifically warned Foster Farms of the
17 imminent danger Establishment 6137 posed to the public, noting “Pathogens such as *Salmonella* are of
18 serious public health concern and can cause a variety of illnesses Your establishment has failed to
19 demonstrate that it has adequate controls in place to address *Salmonella* in your poultry products as
20 evidenced by the continuing illness outbreak. Your establishment’s control measures and
21 antimicrobial interventions in your Slaughter, Raw Intact and Raw Non Intact operations are not
22 sufficient to control *Salmonella*, specifically, *Salmonella* Heidelberg, which has been associated with
23 the illness outbreak Your establishment identifies *Salmonella* as a food safety hazard not
24 reasonably likely to occur in your Raw Intact and Raw Non Intact processes. However, as evidenced
25 by the multiple *Salmonella* positive test results in poultry parts, whole chickens, and chicken
26 tenderloins/strips produced at your facility, your establishment is unable to support that *Salmonella* is a
27 biological food safety hazard not reasonably likely to occur in your Raw Interact and Raw Non Intact
28 processes. Your establishment has failed to implement adequate control measures to address the

1 prevalence of *Salmonella* in your poultry products.” Exhibit 2.

2 137. Foster Farms was clearly on notice that it had a history of *Salmonella* Heidelberg
3 contaminated products going back a decade; that the chicken it was selling in 2013 and beyond was
4 tainted with *Salmonella* Heidelberg; that the chicken it was selling in 2013 and beyond was adulterated
5 due to how it was held, processed, and stored under unsanitary conditions; and that its chicken was
6 contaminated with particular strains of *Salmonella* Heidelberg that posed a serious threat to life and
7 health, with nearly twice the rate of hospitalizations and blood infections as traditional strains of
8 salmonella.

9 138. The NOTICE OF INTENDED ENFORCEMENT only confirms the fact, specifically
10 with regard to establishment 6137A (though other facilities were also implicated), that Foster Farms
11 was on notice of the current and ongoing connection between its facilities and *Salmonella* Heidelberg
12 illnesses at least as early as July, 2013 when it was contacted by officials to discuss the current
13 outbreak. Ironically, this outbreak came less than a year after the previous outbreak in which health
14 officials identified Foster Farms as the source. Even so, Foster Farms continued to refuse issuance of a
15 recall and/or to even warn its customers.

16 139. That Defendants’ behavior continued even after receiving a NOTICE OF
17 SUSPENSION directed at Establishment 6137 P is astonishing, especially as the NOTICE so clearly
18 described how the “egregious insanitary conditions observed in your establishment whereby products
19 produced at your facility may have been rendered adulterated in violation of the Poultry Products
20 Inspection Act . . . evinced by live cock roaches in and around your production areas . . .” Exhibit 3.

21 140. Defendants were clearly, completely, and unequivocally aware of the actual and
22 probable dangerous consequences of their conduct, yet consciously disregarded the fact that many
23 individuals would be seriously injured by its behavior. In short, Defendants’ despicable conduct
24 subjected Plaintiffs to cruel and unjust hardship in conscious disregard of their rights. Defendants
25 willfully created and perpetuated a grave danger, concealed this fact from the public, and failed to act
26 in any way to avoid the consequences of such danger to the great detriment of Plaintiffs.

27 ///

28 ///

1 FIRST CAUSE OF ACTION

2 (Strict Products Liability)

3 141. Plaintiffs hereby incorporate paragraphs 1 through 140 above.

4 142. At all times, Defendants were in the business of importing, manufacturing, distributing,
5 and marketing raw chicken.

6 143. There was a manufacturing defect in the raw chicken when it left Defendants'
7 possession and control. The raw chicken was defective because it contained *Salmonella* Heidelberg.
8 Both the presence of *Salmonella* Heidelberg and the fact that the chicken was "prepared, packed, and
9 held in unsanitary conditions whereby it may have become contaminated with filth, or whereby it may
10 have been rendered injurious to health," were conditions of the product that rendered it unreasonably
11 dangerous.

12 144. There was a marketing defect in the chicken when it left Defendants' possession and
13 control. The chicken was defective because it contained *Salmonella* Heidelberg, and because it was
14 prepared, packed and stored under insanitary conditions which allowed it to become contaminate with
15 filth, including the bacteria *Salmonella*, and Defendants failed to give adequate warnings of the
16 product's dangers that were known or by the application of reasonably developed human skill and
17 foresight should have been known. Defendants also failed to give adequate warnings and instructions
18 to avoid such dangers. Defendants' failure to provide such warnings and instructions rendered the
19 chicken unreasonably dangerous.

20 145. Defendants' conduct was a direct, proximate, and producing cause of Plaintiffs' injuries
21 and damages set forth below.

22 146. Defendants are therefore strictly liable for importing, manufacturing, distributing, and
23 marketing defective and unreasonably dangerous chicken and introducing it into the stream of
24 commerce.

25 SECOND CAUSE OF ACTION

26 (Negligence and Negligence Per Se)

27 147. Plaintiffs hereby incorporate paragraphs 1 through 146 above.

28 148. Defendants owed Plaintiffs a duty of ordinary care in the manufacture, preparation,

1 testing, packaging, marketing, storing, holding, distribution, and selling of the chicken in question.
2 Further, Defendants owed Plaintiffs the duty of warning or instructing Plaintiffs of potentially
3 hazardous or life-threatening conditions with respect to the chicken.

4 149. Defendants breached their duties in one or more of at least the following ways:

- 5 a. negligently raising, manufacturing, distributing, and marketing the chicken;
- 6 b. failing to properly test the chicken before placing it into the stream of
7 commerce;
- 8 c. failing to prevent human, insect, and/or animal feces from coming into contact
9 with the chicken;
- 10 d. Failing to store, package, hold, or prepared the chicken in a manner to prevent it
11 from becoming contaminated with filth which could render it injurious to health;
- 12 e. failing to adequately monitor the safety and sanitary conditions of their
13 premises;
- 14 f. failing to apply their own policies and procedures to ensure the safety and
15 sanitary conditions of their premises;
- 16 g. failing to adopt and/or follow recommended good manufacturing practices;
- 17 h. failing to take reasonable measures to prevent the transmission of *Salmonella*
18 bacteria and related filth and adulteration from their premises;
- 19 i. failing to properly train and supervise their employees and agents to prevent the
20 transmission of *Salmonella* bacteria and related filth and adulteration from their
21 premises;
- 22 j. failing to warn Plaintiffs and the general public of the dangerous propensities of
23 the chicken, particularly that it was contaminated with *Salmonella* Heidelberg,
24 despite knowing or having reason to know of such dangers; and
- 25 k. failing to timely disclose post-sale information concerning the dangers
26 associated with the chicken.

27 150. Furthermore, Defendants had a duty to comply with all applicable health regulations,
28 including the USDA's Poultry Products Inspection Act (PPUA) (21 U.S.C. 451 et seq.), and all

1 statutory and regulatory provisions that applied to the import, manufacture, distribution, storage, and/or
2 sale of the product or product ingredients, including but not limited to, Sanitation Standard Operating
3 Procedures (SSOP) and Sanitation Performance Standards (SPS) (Title 9 CFR part 416).

4 151. In addition, under federal applicable state law, food is adulterated if it “has been
5 prepared, packed, or held under insanitary conditions whereby it may have become contaminated with
6 filth, or whereby it may have been rendered injurious to health.”

7 152. Plaintiff was a member of the classes sought to be protected by the regulations and
8 statutes identified above.

9 153. Defendants’ conduct was a direct, proximate, and producing cause of Plaintiff’s injuries
10 and damages set forth below.

11 154. All dangers associated with the product were reasonably foreseeable and/or
12 scientifically discoverable by Defendants at the time Defendants placed the product into the stream of
13 commerce.

14 155. All dangers associated with the contaminated chicken were reasonably foreseeable
15 and/or scientifically discoverable by Defendants at the time Defendants placed the contaminated
16 chicken into the stream of commerce.

17 **THIRD CAUSE OF ACTION**

18 **(Breach of Implied Warranties)**

19 156. Plaintiffs hereby incorporate paragraphs 1 through 155 above.

20 157. Defendants are merchants who produce, manufacture, distribute, and market chicken
21 products. Plaintiffs are consumers.

22 158. Defendants breached the implied warranty of merchantability by impliedly warranting
23 that their chicken was of merchantable quality and fit for human consumption when it was not due to
24 the conditions under which it was prepared, packaged, and held and due to the presence of *Salmonella*
25 Heidelberg. Plaintiffs reasonably relied upon Defendants’ skill and judgment as to whether the chicken
26 was of merchantable quality and fit for human consumption.

27 159. Defendants breached the implied warranty of fitness for a particular purpose, by holding
28 out unreasonably dangerous chicken (i.e. chicken produced under egregious conditions and containing

1 *Salmonella* Heidelberg) to the public as being safe when they knew or had reason to know that the
2 chicken was not safe and that the public would consume the chicken.

3 160. Defendants did not disclaim these implied warranties.

4 161. Defendants' conduct was a direct, proximate, and producing cause of Plaintiffs' injuries
5 and damages set forth below.

6 **DAMAGES, INCLUDING PUNITIVE DAMAGES**

7 162. Plaintiffs hereby incorporate paragraphs 1 through 161 above.

8 163. Defendants' conduct was a direct, proximate, and producing cause of Plaintiffs' injuries
9 and damages, including but not limited to damages in the past and future for the following: pain and
10 suffering, mental anguish, physical impairment, physical disfigurement, loss of enjoyment of life,
11 medical and pharmaceutical expenses, travel and travel-related expenses, emotional distress, lost
12 wages, lost earning capacity, loss of consortium, and other general, special, ordinary, incidental and
13 consequential damages as would be anticipated to arise under the circumstances.

14 164. In addition, Defendants' conduct reflects significant oppression, fraud and malice with
15 demonstrable intent to vex, injure, annoy Plaintiffs and the consumers of Foster Farms chicken
16 products. Defendants' behavior reflects a conscious disregard of the Plaintiffs' rights. Defendants
17 were fully aware of the probable and dangerous consequences of its conduct and it willfully failed to
18 avoid such consequences to the great detriment of Plaintiffs and hundreds of other consumers.
19 Defendants promoted and sold chicken in the United States for consumption even after it had been told
20 by the USDA-FSIS that Foster Farms chicken was causing human illnesses. Foster Farms knew eating
21 its product was dangerous because it could contain *Salmonella* Heidelberg and that many of its
22 customers were being sickened by consuming its product. Defendants nonetheless promoted chicken
23 products as fit for consumption and made no effort to warn consumers. Defendants did so to avoid
24 loss of market share, to generate profit, and to avoid the cost of a recall. Defendants' indefensible
25 behavior demonstrated a conscious disregard for Plaintiffs' rights, safety and wellbeing.

26 165. WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 27 a. Past and future economic and non-economic damages;
28 b. Punitive and/or exemplary damages;

- 1 c. Court costs;
2 d. Pre- and post-judgment interest at the highest rate allowed by law; and
3 e. For such other general and special relief as the Court deems just and proper.

4 **JURY DEMAND**

5 Plaintiffs demand a jury trial for all triable claims.

6
7 Dated: July 2, 2015

GOMEZ TRIAL ATTORNEYS

8 

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10 _____
John Gomez, Esq.
Ahmed S. Diab, Esq.

11 **RON SIMON & ASSOCIATES**
12 Ron Simon
(Pending Pro Hac Vice)

13 **Attorneys for Plaintiffs**
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Food Safety and
Inspection Service

Alameda District
620 Central Avenue,
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Alameda, CA 94501

Phone: (510) 769-5712
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October 7, 2013

Mr. Ron Foster, CEO
Foster Poultry Farms
Establishment 6137 P
843 Davis Street
Livingston, CA 95334

**CERTIFIED RETURN-
RECEIPT REQUESTED**

Email: Robert.Oconner@fosterfarms.com

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Foster:

This letter serves as an official notification by the Food Safety and Inspection Service (FSIS), Alameda District, of the intent to withhold the marks of inspection and suspend the assignment of inspectors for the Slaughter, Raw Intact and Raw Non Intact processes at your establishment, in accordance with FSIS Rules of Practice, Title 9 Code of Federal Regulations (CFR) Parts 500.4(a), 500.4(b) and 500.4(c). This action is based on your establishment's failure to operate in a manner that is consistent with the requirements of the Hazard Analysis and Critical Control Points (HACCP) plan, Sanitation Standard Operating Procedures (SSOP) program, and Sanitation Performance Standards (SPS) regulations, Title 9 Parts 417 and 416. Your failure to operate in accordance with these regulations at Establishment 6137 in Livingston, California, is evidenced by the fact that multiple poultry products produced by your establishment have been implicated in an ongoing illness outbreak for *Salmonella* Heidelberg. Since July 1, 2013, FSIS and the Centers for Disease Control and Prevention (CDC) have been investigating an ongoing outbreak of human illness caused by *Salmonella* Heidelberg beginning in March 2013, through at least September 2013. In addition, your failure to operate in accordance with the abovementioned regulations is evidenced by the results of intensified *Salmonella* verification testing conducted by FSIS over a three week period in September 2013. This intensified testing occurred at multiple Foster Farms establishments, including Establishment 6137, whereby a high frequency of *Salmonella* positives and, specifically, a high frequency of one or more outbreak strains of serotype *Salmonella* Heidelberg were found in your products.

Background/Authority

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) provides that it is essential in the public interest that the health and welfare of consumers be protected, by ensuring that poultry and meat products distributed to them are wholesome, not adulterated, and properly marked, labeled and packaged. The Act gives FSIS the authority, as delegated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing sanitation requirements for inspected establishments. The Act also provides FSIS program personnel the authority to refuse to allow poultry or poultry food products and meat or meat food products to be labeled, marked, stamped, or tagged as '*inspected and passed*' and to prevent the entry of products into commerce when

the sanitary conditions of any such establishment are such that product is rendered adulterated, and provide definitions for the term 'adulterated.' Furthermore, the Act provides FSIS the authority to appoint inspectors from time to time to examine and inspect products, including the sanitary conditions of facilities. The Act also gives FSIS program personnel the right to examine and inspect all carcasses and parts of carcasses that are further treated and prepared and the right to access and examine establishment records. When a facility does not properly maintain sanitary conditions, FSIS can refuse to provide inspection and indefinitely suspend inspection from an establishment provided that FSIS affords the establishment appropriate notice and an opportunity to contest the suspension.

Under the authorities of the Act, FSIS has prescribed rules and regulations required for establishments producing poultry products including the requirements pertaining to Sanitation Standard Operating Procedures (Title 9 CFR Part 416) and Hazard Analysis and Critical Control Point (Title 9 CFR Part 417) and other matters. FSIS has also developed Rules of Practice regarding enforcement (Title 9 CFR Part 500). The Rules of Practice describe the types of enforcement action that FSIS may take and include procedures for taking a withholding action and suspension, with or without prior notification, and for filing a complaint to withdraw a grant of Federal inspection.

Findings/Basis for Action

On July 1, 2013, FSIS was notified of a *Salmonella* Heidelberg cluster with Pulse Field Gel Electrophoresis (PFGE) pattern JF6X01.0258. Since that time CDC, has defined the outbreak to include six additional patterns (.0022, .0045, .0041, .0326, .0122 and .0672) as part of the case outbreak definition. As of September 30, 2013, there are 207 case-patients from 15 states with illness onset dates range from March 2, 2013, to September 9, 2013. The majority of case-patients reported chicken consumption prior to illness onset; among those with brand information, 80 % reported consumption of Foster Farms chicken during case-patients' interviews. A high proportion of case-patients were hospitalized. Foster Farms has been implicated as the producer and supplier of poultry products associated with an ongoing *Salmonella* Heidelberg illness outbreak in several states.

Establishment 6137 has been implicated as a producer and supplier of poultry products associated with this ongoing *Salmonella* Heidelberg illness outbreak. As a result, on September 9, 2013, FSIS initiated intensified *Salmonella* verification testing of various poultry products at this establishment, as well as three other Foster Farms establishments (Establishment 6137A in Fresno, California; Establishment 7632 in Fresno, California; and Establishment 6164A in Kelso, Washington).

Results from the intensified FSIS *Salmonella* verification testing, have shown that one or more of the outbreak strains of *Salmonella* was found in the poultry products produced at your facility. Additionally, the results have shown that one or more of the outbreak strains of *Salmonella* Heidelberg is present in your products. Ongoing illness continues to be associated with these products. FSIS personnel collected 150 various product samples at Establishment 6137. As of October 7, 2013, a total of 40 samples (26.67 %) confirmed

positive for *Salmonella*. There have been 30 isolates of *Salmonella* Heidelberg derived from the *Salmonella* positive samples thus far (See Attachment 1). Furthermore, FSIS has found that multiple *Salmonella* isolates identified on products produced at your facility have the same PFGE patterns as those in the illness outbreak. Although presence of the outbreak strain alone is not evidence that product is adulterated, presence on product coupled with illnesses suggests that the sanitary conditions in the establishment under which the product is produced could pose a serious ongoing threat to public health. The frequency of microbiologically-relevant positive findings suggests that the slaughter, dressing, and further processing of raw poultry product, including the prevention of contamination and the pathogen reduction interventions, are inconsistent and unreliable to control the pathogen of concern. Your sister facility, Establishment 6164A, in Kelso, Washington, was also under intensified FSIS *Salmonella* verification testing. However, Establishment 6164A demonstrated a more consistent and effective process control based on the results of the microbiological testing, along with less evidence of illnesses being associated with product from this establishment. The samples collected from Establishment 6164A resulted in a 1.3% (2/150 samples) *Salmonella* positive rate with only one of the positive samples being associated with the *Salmonella* Heidelberg outbreak strain.

Pathogens such as *Salmonella* are of serious public health concern and can cause a variety of illnesses. The organism can cause a serious infection which can lead to illnesses, including death. Your establishment has failed to demonstrate that it has adequate controls in place to address *Salmonella* in your poultry products as evidenced by the continuing illness outbreak. Your establishment's control measures and antimicrobial interventions in your Slaughter, Raw Intact and Raw Non Intact operations are not sufficient to control *Salmonella*, specifically, *Salmonella* Heidelberg, which has been associated with the illness outbreak. This is a regulatory noncompliance with Title 9 CFR 417.4(a)(1).

Your establishment identifies *Salmonella* as a food safety hazard not reasonably likely to occur in your Raw Intact and Raw Non Intact processes. However, as evidenced by the multiple *Salmonella* positive test results in poultry parts, whole chickens, and chicken tenderloins/strips produced at your facility, your establishment is unable to support that *Salmonella* is a biological food safety hazard not reasonably likely to occur in your Raw Intact and Raw Non Intact processes. Your establishment has failed to implement adequate control measures to address the prevalence of *Salmonella* in your poultry products. Your establishment is unable to support the decisions in your Raw Intact and Raw Non Intact hazard analyses. This is a regulatory noncompliance with Title 9 CFR 417.2(a), as well as the associated requirements of Title 9 CFR 417.5(a)(1).

Foster Farms was notified on July 25, 2013, via teleconference with Foster Farms Corporate officials and FSIS management personnel, of the ongoing illness outbreak associated with Foster Farms poultry products, including a specific identification of Establishment 6137. Your establishment failed to adequately reassess the HACCP plan and modify the plan to control food safety hazards that could be introduced inside or outside the establishment. This is noncompliant with Title 9 CFR 417.4(a)(3).

Although FSIS is primarily concerned with the performance of the establishment beginning at the time of the intensified FSIS *Salmonella* testing and forward, the performance of the establishment just prior to and during the time of the illness onset forward also is of concern. During this time, your establishment has had multiple regulatory noncompliances issued for insanitary conditions. Specifically, from January 1, 2013, (just prior to identification of illness in early March), through September 27, 2013, FSIS personnel have documented 34 Noncompliance Records (NRs) for findings of fecal material on carcasses. Furthermore, FSIS has identified multiple noncompliances including but not limited to findings of poor sanitary dressing practices, insanitary food contact surfaces, insanitary non food contact surfaces and direct product contamination as evidenced by the documentation of a considerable number of recurring NRs issued to your establishment for preoperational, operational, and SPS noncompliances.

For the reasons stated above and in accordance with Title 9 CFR 417.6(a) and Title 9 CFR 417.6(d), FSIS has determined your HACCP system is inadequate. Additionally, the multiple and recurring sanitation noncompliances identified at your facility during the period of time your establishment was implicated with associated illnesses, could indicate your establishment has failed to operate and produce poultry products in a manner that complies with Title 9 CFR 416.1.

FSIS is very concerned with the failure of Establishment 6137 to implement adequate and supportable control measures to address *Salmonella*, coupled with the high frequency of one or more outbreak strains of *Salmonella* Heidelberg associated with ongoing illnesses and found in products produced by this establishment. You are unable to effectively implement and maintain your HACCP system or demonstrate that your establishment's process controls are functioning as intended to prevent or control *Salmonella* in your process. The prevalence of *Salmonella* in finished poultry products poses a risk to public health. As demonstrated by the FSIS *Salmonella* verification testing, your establishment has failed to prevent the production of products contaminated with *Salmonella* and of a serotype known to cause human illness.

A prudent establishment would take the control measures necessary to prevent the persistent recurrence of *Salmonella*, including but not limited to validated interventions to demonstrate control of your process. FSIS affirms that proper process controls are an important, fundamental, and integral aspect of an adequate food safety system.

The Poultry Products Inspection Act, 21 U.S.C. 456 states: "*the Secretary shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.*" Foster Farms failed to implement and maintain an adequate HACCP system. This resulted in the failure to maintain sanitary conditions at the establishment that could result in the production of products that may have been rendered injurious to health.

In accordance with FSIS Rules of Practice, Title 9 CFR Part 500.4, we are notifying you of our intent to withhold the marks of inspection and suspend the assignment of inspectors at your facility. You are required to respond to this notice adequately, in writing, addressing all regulatory non-compliances in this notice. Please provide this office with a written response within three (3) business days from the date of your receipt of this letter. We will determine if any further administrative enforcement action will be taken based on your response. You may submit your response by facsimile to (510) 337-5081.

In accordance with Title 9 CFR 500.5(b)(4), you may contest the basis for this proposed action by contacting:

Dr. Keith Gilmore
Executive Associate for Regulatory Operations
210 Walnut Street
Room 923
Des Moines, IA 50309
Phone: 515-727-8970

If you have any questions, please call the Alameda District Office at (510) 769-5712.

Sincerely,



Yudhbir Sharma, DVM
District Manager

cc:

Y. Sharma, DM
F. Gillis, DDM
A. Amin, DDM
V. Felix, DDM
L. Wang, DCS
J. Scrivner, DCS
G. Abreu, FLS
M. Tiojanco, SEIAO
C. Vu, SEIAO
R. Flood, EIAO
M. Salazar, EIAO
A. Khroustalev, IEA, RD
USDA IIC, Est. 6137P
FO/QR



Food Safety and
Inspection Service

January 8, 2014

Alameda District
620 Central Avenue,
Bldg. 2C
Alameda, CA 94501

Phone: (510) 769-5712
Fax: (510) 337-5081

Mr. Ron Foster, CEO
Foster Poultry Farms
Establishment 6137 P
P.O. Box 457
Livingston, CA 95334

**CERTIFIED RETURN-
RECEIPT REQUESTED**

Email: Robert.Oconnor@fosterfarms.com

NOTICE OF SUSPENSION

Dear Mr. Foster:

This letter confirms the verbal notification that was provided to your establishment on January 8, 2014, by the Food Safety and Inspection Service (FSIS), Alameda District, of the withholding of the marks of inspection and the suspension of the assignment of inspectors at your establishment in accordance with FSIS Rules of Practice, Title 9 Code of Federal Regulations (CFR), Part 500.3(a)(4). This action is initiated based on egregious insanitary conditions observed in your establishment whereby products produced at your facility may have been rendered adulterated in violation of the Poultry Products Inspection Act (PPIA) 21 U.S.C. 453 and 456, and the regulations promulgated thereunder, specifically Title 9 CFR 416. This is evidenced by findings of an infestation of live cockroaches in and around your production areas, that created insanitary conditions, and demonstrate that your firm failed to maintain an effective pest control program and other sanitary controls to assure that wholesome, unadulterated meat and poultry products are produced at your facility.

Background/Authority

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) provides that it is essential in the public interest that the health and welfare of consumers be protected, by assuring that poultry products distributed to them are wholesome, not adulterated, properly marked, labeled and packaged. This Act gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to issue rules and regulations describing sanitation requirements for inspected establishments. The Act also provides FSIS program personnel the authority to refuse to allow poultry or poultry products to be labeled, marked, stamped, or tagged as “*inspected and passed*” and to prevent the entry of products into commerce when the sanitary conditions of any such establishment are such that products are adulterated and provide definitions for the term “*adulterated*.” Furthermore, this Act provides FSIS the authority to appoint inspectors from time to time to examine and inspect products, including the

sanitary conditions of facilities. The Act also give FSIS program personnel the right to examine and inspect all carcasses and parts of carcasses that are further treated and prepared and the right to access and examine establishment records. When the sanitary conditions of a facility are not properly maintained, FSIS can refuse inspection and indefinitely withdraw inspection from an establishment, provided the establishment is afforded the right to an administrative hearing.

Under the authorities of the Act, FSIS has prescribed rules and regulations required for establishments producing poultry products including the requirements pertaining to Sanitation Standard Operating Procedures (SSOP) and Sanitation Performance Standards (SPS) (Title 9 CFR Part 416) and other matters. FSIS has also developed Rules of Practices regarding enforcement (Title 9 CFR, Part 500). The Rules of Practice describe the types of enforcement action that FSIS may take and include procedures for taking a withholding action and suspension, with or without prior notification, and for filing a complaint to withdraw a grant of Federal Inspection.

Findings/Basis for Action

On January 8, 2014, during production at 0350 hours, FSIS inspection personnel observed and documented findings of live cockroaches at the hand wash sink directly across from Inspection Station 7, line 2. At the time of the observation, slaughter operations were in progress, and exposed product was present on the kill floor. FSIS inspection personnel took a withholding action due to the presence of live cockroaches in the production area at your establishment.

Further, FSIS inspection personnel have documented noncompliances related to cockroaches in your production areas on four occasions between August 1, 2013, and January 8, 2014.

- On January 7, 2014, FSIS documented a noncompliance for live cockroaches found during production on a grey plastic tub that is a direct product contact surface.
- On December 28, 2013, FSIS documented a noncompliance for live cockroaches found during production to the left of the faucet of Inspection Station 7.
- On November 4, 2013, FSIS documented a noncompliance for live cockroaches found during production next to the sanitizer dispenser box, which is located on the wall next to the ice machine.
- On September 14, 2013, FSIS documented a noncompliance for live cockroaches found during production on the floor between the liver tumbler/belt and the wall.

FSIS Inspection has observed and documented cockroaches in your establishment on multiple days (including on two consecutive days), in multiple locations within your establishment. These recent findings of egregious insanitary conditions related to a

cockroach infestation in your facility indicate that your establishment is not being operated and maintained in sanitary condition, or in a manner to ensure that product is not adulterated. As demonstrated by the findings of pests in your facility, your establishment failed to prevent conditions that could lead to insanitary conditions, where products may have been rendered adulterated and/or injurious to health. These are regulatory noncompliances of Title 9 CFR 416.1, 416.2(a) and 416.2(b)(3).

On January 8, 2014, the Alameda District Office (ADO) verbally notified your establishment of the withholding of the marks of inspection and suspension of the assignment of inspectors based on the egregious insanitary conditions present within your facility.

Pests are highly unsanitary given that they can come in contact with decomposing garbage or other organic materials. Because animal-based organic materials and garbage are excellent breeding media, cockroaches and other pests can transmit disease-causing pathogens, including bacteria. Poorly maintained facilities and equipment that are not maintained to prevent entrance of pests, such as cockroaches, rats and flies, can and do harbor food borne pathogens, which can then multiply and be dispersed throughout the food processing environment, increasing the chances of product contamination rendering the product unsafe.

The Poultry Products Inspection Act, 21 U.S.C. 453(g)(4), states product is adulterated *“if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.”* Foster Poultry Farms failed to meet the sanitary measures required by the Sanitation Performance Standards regulatory requirements, creating insanitary conditions that may result in the production of products, which may have been rendered injurious to health.

The Poultry Products Inspection Act, 21 U.S.C. 456 states, *“the Secretary shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.”* Foster Poultry Farms failed to maintain sanitary conditions at its establishment, creating insanitary conditions that could result in the production of products, which may have been rendered injurious to health.

The Poultry Products Inspection Act, 21 U.S.C. 463 states, *“the Secretary shall make rules and regulations as are necessary for the efficient execution of the provisions of this Act and all inspections and examinations made under this Act shall be made in such manner as described in the rules and regulations.”* Foster Poultry Farms failed to abide by the rules and regulations promulgated under the Poultry Products Inspection Act.

Based on the above findings of your failures to meet the SSOP and SPS regulatory requirements in accordance with Title 9 CFR, Part 416, your failure to implement effective corrective actions and preventive measures, and the existing insanitary conditions that may render product(s) at your establishment adulterated, FSIS is suspending the assignment of inspectors for all processes at your establishment.

The suspension will remain in effect until such time as you provide adequate written assurances of corrective and preventive measures to assure that meat and poultry products will be produced under sanitary conditions in accordance with the Poultry Products Inspection Act and the regulations promulgated there under.

Your corrective and preventive action plan should include at a minimum the following:

- 1- Identify the assessment process you intend to use to determine the nature and cause of the insanitary condition and the occurrence of pest infestation, including but not limited to the conditions of your facility and the level of repair performed at your facility.
- 2- Identify what the assessment revealed as the likely cause of pest problems in your establishment.
- 3- Describe what specific actions your establishment will take to correct and eliminate the causes.
- 4- Provide a pest control program that will describe the monitoring procedures and other activities that will ensure the prevention of future pest infestations.
- 5- Define the future monitoring activities that your firm intends to use to ensure that the changes and the preventive measures you initiated are effective.

In addition, failure to respond to this notice of suspension adequately, or failure to assure that the products produced at your establishment meet the requirements of the Poultry Products Inspection Act and the regulations promulgated there under, may result in further administrative enforcement actions. You may submit your response via facsimile to 510-337-5081 or by electronic mail (email) to virginia.molano@fsis.usda.gov.

In accordance with Title 9 CFR 500.5(a)(5), you may appeal this action by contacting:

Dr. Hany Sidrak
Executive Associate for Regulatory Operations
1400 Independence Avenue, SW
Room 3157-S
Washington, DC 20250
Phone: 202-205-4208

In accordance with 9 CFR 500.5(d), you may request a hearing concerning this action by contacting:

Director; Enforcement and Litigation Division
Office of Investigation, Enforcement, and Audit
Food Safety and Inspection Service
United States Department of Agriculture
Patriot Plaza III, 8th Floor, Cubicle 8-243A
355 E Street, SW
Washington, DC 20024-3221
Telephone: (202) 418-8872
Facsimile Number: (202) 245-5097

If you have any questions, please call the Alameda District Office at 510-769-5712.

Sincerely,

/S/

Abdalla Amin
Deputy District Manager

cc:

Y. Sharma, DM
F. Gillis, DDM
V. Felix, DDM
J. Scrivner, DCS
L. Wang, DCS
M. Tiojanco, SEIAO
C. Vu, SEIAO
G. Abreu, FLS
M. Williams, EIAO
A. Khroustalev, RD, IEA
USDA, IIC, Est. 6137 P
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